



**THE DEFERRED COMPENSATION COUNCIL
MEETING MINUTES OF
NOVEMBER 13, 2015**

A meeting of the Deferred Compensation Council (the "Council") was held
On November 13, 2015 at 9:00 AM in the Conference Room of the Office of the State Treasurer
Located at 820 Silver Lake Blvd., Suite 100, Dover, Delaware.

All Board Members Represented or in Attendance:

The Honorable Ken Simpler, State Treasurer
The Honorable Karen Stewart, Insurance Commissioner
Ms. Valerie M. Watson (on behalf of Secretary Thomas J. Cook, Department of Finance)
Mr. Robert Scoglietti (on behalf of Director Ann Visalli, Office of Management & Budget)
Mr. Charles Campbell-King, State Employee Member At-Large
Mr. Ralph Cetrulo, Public Member At-Large

Others in Attendance:

Ms. Ann Marie Johnson, Deputy Attorney General
Ms. Jennifer Vaughn, Department of Insurance
Ms. Rhonda West, Department of Insurance
Ms. Nora Gonzalez, Deputy State Treasurer, Office of the State Treasurer
Mr. Michael Green, Financial Investment Program Manager, Office of the State Treasurer
Mr. Dan Kimmel, Financial Investment Program Specialist, Office of the State Treasurer
Ms. Martha Sturtevant, Executive Assistant to the State Treasurer
Mr. Michael Sanders, Principal, Cammack Retirement Group
Ms. Emily Wrightson, Managing Consultant, Cammack Retirement Group
Mr. Jeffrey Snyder, Vice President, Cammack Retirement Group
Mr. Peter Ganey, Mass Mutual
Ms. Rebecca Kidner, RB Kidner, PA

CALLED TO ORDER

Mr. Simpler called the meeting to order at 9:00 AM

APPROVAL OF MINUTES

Mr. Simpler suggested a draft posting of the minutes to be approved at the next meeting to allow for the Council to have time to review.

REPORT ON DEFINED CONTRIBUTION PROGRAMS

Administration of Revenue Credit Program (RCP)

Ms. Gonzalez discussed the RCP with the Auditor of Accounts (AOA), the Division of Accounting (DOA), and the Office of Management and Budget (OMB). She reported that each agency was conceptually in agreement with the proposed administration and reporting protocol proposed by OST. OST will prepare a Memorandum with the proposed details for review and formal approval by AOA, DOA, and OMB.

Budget Deficit: FY16, 401(a) and 403(b)

Ms. Gonzalez stated that after further discussion with OMB, she was assured that the FY2016 deficit will be addressed by the end of the year. Additionally, as suggested by OMB and directed by the Council, OST submitted the request to amend the Delaware Code as part of the budget epilogue to make the administrative expenses language consistent with other state plans.

Status of Completion of Audit

Ms. Gonzalez addressed the Council's request to provide clarifications regarding the status of completion for the plans' financial statements prepared by Baker Tilley (BT) and the plan audits prepared by Belfint, Lyons, and Shuman (BLS). Ms. Gonzalez explained that factors contributing to the delays in completing the financial statements and audits in recent years included the timing associated with executing the engagement letters delivered by both providers after the procurement processes was finalized, reporting formats used by the recordkeepers (which in some cases did not meet the expectation set by the engaged providers) and personnel transitions at both OST and the Delaware Transit Corporations (DTC).

Ms. Gonzalez expects to coordinate a meeting early next year to review the financial statements and audits for all plans but wanted to briefly discuss the FY14 financial statements for the 403(b) plan because both BT and BLS identified \$560,316 in administrative expenses paid by participants as reported by AXA and reflected in the trial balance. An initial review suggests that the fees are likely to have originated from \$29,560,080 in transfers between existing 403b vendors, predominantly from AXA to Security Benefit. OST requested and received disclosures from AXA including the participants, account balances and fees charged. Additionally, OST requested that Security Benefit validate the information provided by AXA. Security Benefit stated that the information would be forthcoming if they were able to produce it. A request was also submitted to VALIC to see if they have records of these transactions. Mr. Simpler noted that administrative expenses from AXA and Security Benefit for both 2013 and 2014 were noteworthy. He noted all other vendors have significantly lower fees and the lack of transparency is a problem. Mr. Simpler said this is an example of why the existing review of the plans through the RFP process would benefit participants.

Mr. Kimmel added more data was required to explain why the financial statement showed a \$5,643,292 decrease in net plan assets even though there were \$25,632,402 and \$800,614 in participants' contributions and rollovers respectively. Ms. Gonzalez stated that both BT and BLS reported significant delays for responses from particular vendors, requiring significant follow up. Although vendor technology platforms may account for some delay, OST would inquire further and report back to the Council.

Ms. Gonzalez has asked about the value of the compilations when the plans are managed by a single vendor. BLS indicated that data can be produced by the vendor platform when using a single vendor and would be identical to reports provided by a compilation firm. Mr. Cetrulo stated that using a compilation firm for the 403b plan makes sense due to the size and complexity and that compiling financials should drive the audit costs down.

Ms. Gonzalez further explained that OST as plan administrator is responsible for producing the financial statements of the plans and AOA engages an auditor to conduct the audit.

Ms. Gonzalez stated that the ideal timeline to prepare the compilation would be to start just after January 1, and complete the process by March. The auditors would complete the audit by April and in May OST would be able to present the audit reports to the Council. This timeline is dependent on receiving timely reports from the vendors.

Ms. Gonzalez requested the DCC to approve an extension of the compilation contract for one year, in order to cover the 2015 and 2016 compilation reports for all plans. She indicated that she also would ask to Incorporate the term extension, an update to the fee schedule reflecting the new quote, the deadlines required to maintain the preferred timeline as discussed, and to allow the revenue credit program to cover payments as provided by the contract.

A MOTION was made by Mr. Scoglietti and seconded by Ms. Watson to approve the extension and amendments of the contract as proposed with Baker Tilley subject to legal review.

MOTION ADOPTED UNANIMOUSLY

Ms. Gonzalez asked for approval to request that AOA extend the existing auditor engagement for the 2015 and 2016 audits. Mr. Simpler said the request would keep the compilation and auditing services intact through what could be a transition year and he agreed with the approach.

Mr. Campbell-King and Mr. Scoglietti questioned the 2016 budget cost of the audits and both felt it was too high. Mr. Campbell-King said he would like to revisit the audit cost in the future to see if the costs could be brought down, particularly for the 403(b) plan. Ms. Watson suggested that going forward a Council member offer to be part of the Auditor's review process.

A MOTION was made by Mr. Scoglietti and seconded by Ms. Watson to delegate the authority to sign the representation and engagement letters for audits and compilations on behalf of the Deferred Compensation Council to the State Treasurer, Kenneth A. Simpler.

MOTION ADOPTED UNANIMOUSLY

Ms. Gonzalez stated the Memorandum of Understanding (MOU) between the Auditor's office and OST may need to be updated to reflect the changes discussed hereto. The Council thanked Ms. Gonzalez for the clean-up of documentations. Ms. Gonzalez credited her team and the agencies providing guidance.

OLD BUSINESS

Ms. Gonzalez discussed the DCC statutory requirement to provide an annual report to the Governor and the General Assembly. Mr. Kimmel said historically plan data was reflected in the "Flowers Framework."

Ms. Gonzalez said that she has been researching formats used by other states to present plan reports was in the process of gathering data sources from PHRST and understanding what information can be reliably and consistently available going forward.. Ms. Watson suggested Ms. Gonzalez reach out to other states for copies or samples of their annual reports and added that it should be posted on the website and accessible to the public.

Mr. Green added an update from Fidelity on a short-term bond fund (American Beacon Fund) that was liquidated. Mr. Green asked why the account was liquidated and Fidelity stated the expense ratio was high and they did not have the assets to compete. The funds transferred to the designated default vehicle, the Qualified Domestic Option, a target date fund. A notification letter was sent by Fidelity to the 11 impacted participants to contact Fidelity to make changes to this allocation. Mr. Campbell-King suggested the form letter was too generic and that there be an attempt to reach the 11 impacted participants. Mr. Simpler asked if the Council ever approved Fidelity's default fund option and noted the letter sent from Fidelity to the participants did not disclose the specific default fund option.

DEPUTY ATTORNEY GENERAL REPORT

Ms. Johnson reviewed the memo on non-grandfathered legacy vendors (pre-2009). She stated under Delaware law fiduciary duties are defined in common law, particularly equity jurisprudence. Ms. Johnson further added that IRS requires the state to make a good faith effort to locate the non-grandfathered, orphaned accounts and to develop some type of information sharing protocol.

Ms. Johnson explained the Supreme Court's decision in *Tibble*, noting that the Court found that under ERISA, there is an obligation of corporations as plan administrators to oversee the selection of managers, investments, and fee levels of deferred savings programs. Although the 403(b) and the 457 plan are not governed by ERISA, *Tibbets* represents a best practice for the DCC. With regard to overseeing legacy vendors, there were no specific cases under ERISA or government practice which addressed the role of the administrator. In view of that, the IRS would impose a reasonableness standard, including an information sharing agreement. Ms. Gonzalez added OST has a meeting scheduled with PHRST to discuss the possibility of identifying pre-2009 legacy vendors had been located and is now available. Ms. Watson said this same standard of good faith effort should be applied to the 11 employees discussed previously. Mr. Snyder recommended a letter should be sent by Fidelity and not by OST. Mr. Sanders suggested Fidelity reach out to the impacted participants, but that all communications with participants by Fidelity should be reviewed by OST prior to being sent.

DISCUSSION OF COMPREHENSIVE REVIEW OF DEFINED CONTRIBUTION PROGRAMS

Ms. Gonzalez provided a brief update on the selection committee process. She indicated that the collective group review of all proposals was now complete, and the next step was to decide which RFP scenario is preferable. She acknowledged the initial timeline was ambitious, as the information submitted has been comprehensive. Mr. Campbell-King also emphasized that no consensus as to which alternative approach to take had been reached by the Committee, and reiterated that the process had been thoughtful and thorough. Ms. Watson added that the structure of the process has been very educational and comprehensive and she was grateful to participate in the due diligence review. Ms. West echoed the same sentiments.

Ms. Gonzalez then walked through the remaining timeline of review and said she expects the committee will be ready to review finalist the week of December 7th and site visits the week following. She anticipates the committee could be ready to make a recommendation to the Council the week of January 11th, 2016.

Mr. Simpler asked the Council for their feedback on the process and what scope of participation the full Council wished to have. Ms. Gonzalez said that it was critical for the selection committee to understand if they had discretion over deciding the direction or directions that would frame the final presentations or if all options should

be kept open until the Council meets again. She added that at the next selection committee meeting the ranking of proposals was expected to take place, the list of finalists would be clear and additional discussions regarding the scenarios would be needed.

Mr. Simpler asked the Council if they would like preliminary recommendations from the selection committee presented at the next meeting before any option selected. Mr. Scoglietti said he would like to be included in preliminary discussions regarding the recommendations of the selection committee. The Council collectively agreed. Ms. Gonzalez said she would prepare a revised timeline and schedule a meeting of the full Council within the next two weeks after the selection committee has met to discuss finalist rankings.

Mr. Scoglietti asked about the timeline and transition for implementation. Mr. Campbell-King said several steps will need to be accelerated and it leaves little buffer in the existing timeline. Mr. Simpler said the most important part of implantation was getting the architecture right, even if it takes longer.

Ms. Gonzalez asked Cammack to review their response summary to the letters from the National Tax-Deferred Savings Association (NTSA) and the Delaware State Education Association (DSEA). Mr. Sanders stated they researched the accuracy of the claims being made in order to provide the Council with the background and context related to each and added two members of Cammack (one of whom is an expert in compliance and chairs a committee on communications at the NTSA) are among NTSA's 3,300 members. He described NTSA as a lobbying group, representing some of the vendors facing the possibility of elimination through the RFP process. Mr. Snyder added that the NTSA Executive Director came from one of the 403b plan existing vendors.

Ms. Wrightson reviewed the issues raised and responses prepared by Cammack in response to comment letters received by OST:

1. NTSA asserted that it has conducted studies establishing that state 403(b) plans with a single or limited number of recordkeepers reduce participation. Response: Of the states cited, one was not comparable by the NTSA's own admission (it was a hybrid plan), the second had a plan that had been in effect for less than a year, and the third had a low participation rate prior to the vendor limitation, and was based on a selective survey of sample schools, not representative data.
2. The consulting firm should have conducted a Request for Information (RFI) prior to conducting an RFP. Response: A comprehensive RFI was conducted in advance of the RFP and OST continues to gather data as part of the process. Mr. Wrightson stated Cammack conducted an RFI review of 15 providers in the consolidated report provided to the Council in July and noted some vendors sent in very limited data or no data at all. Mr.
3. The consulting firm placed minimum size requirements on RFP bidders. Response: This was done to ensure that bidders have experience servicing plans similar to the size of the State of Delaware and is accepted industry practice. Ms. Wrightson elaborated further that this was common among public plans. Mr. Sanders said it puts forward that the plan sponsor is looking for a commitment and a track record. He noted there was nothing in the contract that said you could not subcontract with another firm to partner up to meet minimums. Mr. Simpler asked how many of the current vendors could not meet the current standard. Ms. Wrightson recalled that it was 6 or 7 out of 15.

4. The aggressive RFP timeline and the consultants written action plan from July 21, 2015 makes it clear that the DCC has made its decision with regard to plan architecture (a single vendor platform). Response: The RFP timeline of 4 months is standard for such requests. The RFP Scope of Services, in allowing for single or multiple vendors, contradicts any notion of a specific decision regarding plan architecture.
5. The consulting firm failed to inform the DCC that it was aware that 3 of the 4 largest providers in the current 403(b) plan could not satisfy the minimum size requirements. Response: Establishment of minimum qualifications are an industry standard and are designed to ensure the firms who respond can provide the proper level of service to meet the plan's goals and objectives. The State does not prohibit subcontractor relationships, only requesting that they are disclosed as part of the RFP process.
6. The consulting firm ignored the unique characteristics of a public school voluntary 403(b) plan by weighing cost at 25% of bidder score vs. 15% for participant education. Response: Participant education and communication account for 35% of the vendor score. The overall cost structure represents 10% of the 25% cited in the RFP. In terms of participant education, vendors were asked to provide a multi-channeled approach for reaching employees, including the use of field representatives. The RFP specifically asks vendors to outline a methodology to allow employees to pay an advisor through plan assets. Ms. Wrightson elaborated that the evaluation of the cost and the investment platform is tied together at 25% of which only 10% is cost. Additionally participant education and communication to include the call center, website and one-on-ones totals 35%. Mr. Simpler said participant communications was always weighted most heavily and he felt the letter was a misrepresentation of the facts. Mr. Simpler said the letter implies a shifting of costs from the state to the employees when in fact the Council is seeking to lower the cost for the employees themselves. He said the administrative savings is marginal relative to the cost savings for the employees.
7. The process does not adequately address the issue of plan compliance, and that NTSA professionals, if involved, could address this issue. Response: The consulting firm employs NTSA members, including one who chairs a key NTSA committee and who was directly involved with the current process.
8. The DCC should consider issuing a separate RFP for a third party administrator. Response: The existing RFP already addresses administrative services. Ms. Wrightson elaborated that the RFP addresses administrative services including the option for a common remitter. Mr. Simpler asked for clarification regarding the nomenclature being used.
9. The consulting firm should have informed the DCC that the number one IRS audit issue for 403(b) voluntary plans is plan participation. Response: The IRS has designated the related universal availability as a top ten audit issue. The NTSA committee chair employed by the consulting firm has written several articles on the subject. The ability of successful bidders to increase plan participation is a point of emphasis in the RFP Scope of Services. Ms. Wrightson acknowledged participation is a concern of the IRS and argued that Cammack is uniquely situated to address this concern.
10. Many accounts will require new authorizations as a result of the RFP, disrupting employees. Response: Any change in vendor for any benefit does result in employee disruption, which will be addressed to the extent possible in order to minimize such disruption. Ms. Wrightson said participants contributions will not stop, but rather they will be redirected. She added that participants do not necessarily have to take action and would default to the path determined by the Council. Mr. Sanders clarified that they will not need to re-enroll and added that this approach was considered an industry standard. Mr. Simpler asked about the multi-vendor

scenario and Ms. Watson asked about default investment selections. Mr. Sanders said selecting a default provider and investments from the more than 1,500 options currently available would take some work but stated participants could easily modify the default by accessing their account online.

11. Consideration should be given to maintaining the current six vendors that represent nearly 90% of existing plan participants. Response: Consideration to bidders who are incumbent vendors is typically given as part of any existing retirement plan recordkeeping process.
12. The current consultant is not independent with respect to a single vs. multiple vendor model, citing examples of their work in Tennessee and Washington State. Response: The engagements referenced either had a single vendor service model or considered single/multi-vendor models through an RFP process. With respect to 403(b) plans, many of the current consultant's clients maintain multiple providers to service their plans. Ms. Wrightson stated historically Cammack has remained focused on non-profits and emphasized many of the 403(b) programs have multiple vendors. Ms. Snyder 40% of Cammack's clients have 2 or more vendors and of those, 20% have more than 2. Ms. Wrightson said each client has a unique set of circumstances that may direct them to one option or another. Mr. Sanders stated that he wasn't aware of another advisory firm that had more 403 business, more plans, more history or more thought leaders in the industry.
13. The consulting firm's action plan, as presented at the July 21st, 2015 meeting, calls for only offering 20-30 investment options going forward, with no fixed interest option. Response: The final RFP, though it mentions the potential for streamlining the current overwhelming array of over 2,500 investment options, does not place any specific restrictions on the number of investments. The RFP also specifically includes a request for fixed interest account provisions. Ms. Wrightson stated that although 20-30 investment options with no fixed interest options is considered best practice, the final RFP did not say what the final decision of the Council would be as it is still under review.
14. The RFP appears to be mutual fund focused, with very little reference to annuity products. Response: The references to both mutual funds and annuities are somewhat limited in the RFP, which is focused on recordkeeping and administrative services. The investment array(s) will be determined after the vendor(s) are selected. Ms. Wrightson acknowledged Cammack tries to minimize reference to mutual funds and annuity products. She stated because of the unbundled approach to pricing, the recordkeeping should be separate from the investments which would be selected after in order to avoid conflict of interest. Mr. Simpler clarified for the record that he did not think that the Council would commit to a vendor(s) that could not offer appropriate products.

Mr. Simpler said after discussions with several members of the General Assembly regarding the issues raised hereto, OST is planning to meet with NTSA and he asked if other members of the Council would like to be included in the meeting. Ms. Gonzalez said the meeting is scheduled for November 23rd but could be rescheduled if necessary. If the Council wanted to be included, the meeting would be noticed as a public meeting. Ms. Stewart, Mr. Campbell-King and Ms. Watson all expressed interest in attending pending review of scheduling conflicts.

Mr. Simpler said in addition to the Deferred Compensation Programs, OST will return to the administration of the 529 College Savings Investment Plan (DCIP) under governance provided by the DCIP Board and is positioned to lead the implementation of the new 529(a) Achieving a Better Life Experience Plan (ABLE) guided by the ABLE Board.

After some discussion with the Governor's Office, Mr. Simpler wanted to suggest to the Council exploring a possible consolidation modeled after the Cash Management Policy Board. Noting some differences, he said the CMPB includes several members not employed by state government and it has two working sub-committees. He described how under the suggested consolidation there could be separate working sub-committees to address each plan and they would be consolidated at the top.

Mr. Simpler explained there were elements the boards have in common, significant expertise exists at each board and a proposal to merge them would produce a stronger board with the knowledge base to effectively oversee all Plans. He asked the Council for feedback on whether they were open to exploring a possible consolidation or if they were opposed. He noted additionally it would require legislative approval.

Ms. Watson asked if a memorandum to facilitate the discussion could be prepared. Mr. Scoglietti said he is open to the idea of sub-committees, noting it would make full Council meetings more productive. Mr. Simpler agreed and stated that the discussion will continue at the next Council meeting.

PUBLIC COMMENTS

No public comments.

ADJOURNMENT

A MOTION was made by Mr. Cetrulo and seconded by Ms. Stewart to adjourned the meeting at 12:05 PM
MOTION ADOPTED UNANIMOUSLY

Respectfully submitted,

The Honorable Ken Simpler, State Treasurer
Co-Chair for the Deferred Compensation Council

The Honorable Thomas J. Cook, Secretary of Finance
Co-Chair for the Deferred Compensation Council